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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 ANASTASIA KIRKEBY,
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13 Plaintiff,
14 vs.
15 JP MORGAN CHASE BANK, N.A.;
16 and CALIFORNIA
RECONVEYANCE COMPANY,
Defendants.

CASE NO. 13cv377 WQH-MDD

ORDER

17 HAYES, Judge:

18 The matter before the Court is Plaintiff's Ex Parte Motion for Miscellaneous
19 Relief and Motion for Leave to Amend Fourth Amended Complaint ("Motion for Leave
20 to Amend"). (ECF No. 47).

21 **BACKGROUND**

22 On January 8, 2014, the Court issued an Order granting Plaintiff leave to file a
23 fourth amended complaint. (ECF No. 43). On January 29, 2014, Plaintiff filed the
24 Fourth Amended Complaint. (ECF No. 45). On January 31, 2014, Plaintiff filed the
25 Motion for Leave to Amend. (ECF No. 47). Plaintiff contends that "based on newly
26 discovered evidence," she is able to "fully identify and plead the true name and legal
27 capacity of the Defendant named in the Fourth Amended Complaint as 'Doe Entity
28 1'...." *Id.* at 1-2. Plaintiff requests leave to file a fifth amended complaint in order to

1 identify 'Doe Entity 1' as Fidelity National Financial, Inc. *Id.* at 2.

2 **RULING OF THE COURT**

3 Rule 15 of the Federal Rules of Civil Procedure allows a party to amend its
4 pleading once as a matter of course, and after that with either the opposing party's
5 written consent or the court's leave. The court should freely give leave when justice so
6 requires. Fed. R. Civ. P. 15(a).

7 An amendment must be complete in and of itself. *Greene v. Jones*, No. 09-
8 15414, 2010 WL 1193168, at *1 (9th Cir. Mar. 16, 2010); *see also Forsyth v. Humana,*
9 *Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997) ("[An] amended complaint supercedes the
10 original, the latter being treated thereafter as non-existent."). Civil Rule 15.1 of the
11 Local Rules of the United States District Court for the Southern District of California
12 provides that "... every pleading to which an amendment is permitted as a matter of
13 right or has been allowed by court order, must be retyped and filed so that it is complete
14 in itself without reference to the superseded pleading."


15 The Court will allow Plaintiff to file a fifth amended complaint which sets forth
16 all of Plaintiff's claims for relief against all Defendants. The Fifth Amended Complaint
17 must state all of Plaintiff's claims for relief, all support for Plaintiff's claims for relief,
18 and all Defendants. The Fifth Amended Complaint will replace and supercede all
19 preceding complaints, and shall be complete in itself without reference to any of the
20 preceding complaints. Nothing in any of the prior pleadings may be incorporated by
21 reference.

22 Pursuant to Rule 12 of the Federal Rules of Civil Procedure, within 21 days after
23 being served with the Fifth Amended Complaint, Defendants shall file either an answer
24 or a motion asserting any of the following defenses: (1) lack of subject-matter
25 jurisdiction; (2) lack of personal jurisdiction; (3) improper venue; (4) insufficient
26 process; (5) insufficient service of process; (6) failure to state a claim upon which relief
27 can be granted; and (7) failure to join a party under Rule 19. Fed. R. Civ. P. 12(a), (b).

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1 IT IS HEREBY ORDERED that the Motion for Leave to Amend is GRANTED.
2 (ECF No. 47). Plaintiff shall file a fifth amended complaint within **seven (7) days** from
3 the date this Order is filed. If Plaintiff files a fifth amended complaint within **seven (7)**
4 **days** from the date this Order is filed, it will become the operative pleading. If Plaintiff
5 does not file a fifth amended complaint within **seven (7) days** from the date this Order
6 is filed, the Fourth Amended Complaint will remain the operative pleading.

7 DATED: February 5, 2014

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9 **WILLIAM Q. HAYES**
United States District Judge